

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CRIMINAL APPEAL No. 35 of 1988****For Approval and Signature:****HONOURABLE MR.JUSTICE C.K.BUCH**

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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HIRABHAI SOMABHAI SONI - Appellant(s)**Versus****STATE OF GUJARAT - Opponent(s)**

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Appearance :

MS KRUTI J VORA for Appellant(s) :

Mr. AJ DESAI, ADDL.PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH**Date : 07/11/2006****ORAL JUDGMENT**

1. The present Criminal Appeal is filed by the
appellant convict accused challenging the impugned
judgment dated 28.12.1987 passed by the ld. Special

Judge, Ahmedabad (Rural) at Narol in Special Case No.5/1986 whereby the ld. Trial Judge has convicted the appellant accused for the offence punishable under section 161 of IPC and under sections 5(1)(d) R/w section 5(2) of the Prevention of Corruption Act and sentenced the appellant accused to undergo R/I for One Year and to pay a fine of Rs..200/, I/d to undergo further R/I for 3 months for the offences punishable under section 5(1)(d) R/w Section 5(2) of the Prevention of Corruption Act (hereinafter referred to as the PC Act.) The ld. Trial Judge, however, has not awarded any separate sentence for the offence punishable under section 161 of the Indian Penal Code. The Division Bench of this Court has admitted the present appeal while order dated 28.01.1988. However, as per the scheme of the Rules framed by the Gujarat High Court of the year 1993, the present appeal is listed for final hearing before this Bench.

2. Learned Counsel Ms. Banna Datta appearing for ld. Counsel Ms. Kruti Vora for the appellant convict accused has taken this Court through the main grounds of challenge in the memo of appeal and the reasons assigned by the ld. Trial Judge for recording conviction and sentence. She has also read relevant part of the oral evidence led during the course of the trial vis-a-vis the documents tendered by the prosecution. One of the arguments advanced by Ms. Datta is that if the order of conviction otherwise is not found bad or erroneous by this Court, then

this Court at least should alter the quantum of punishment because by assigning the detailed reasons, the trial Judge could have awarded the minimum punishment considering the fact that it was a decoy trap and the amount allegedly accepted by the appellant accused was Rs.5/- which is a very small amount. Ultimately, a government servant on conviction loses everything and that is the real punishment and if a person is sent to jail from a dignified government job, then the period of actual imprisonment becomes irrelevant.

3. Mr. AJ Desai, ld. APP appearing for the State has submitted that the findings recorded by the ld. Trial Judge are absolutely legal and the same are based on correct evaluation of the oral as well as documentary evidence led during the course of trial. All the relevant considerations have been considered and it was found by the ld. Trial Judge that when the complainant has substantially supported the case of the prosecution and also gets corroboration from the deposition of panch No.1 as well as the Investigating Officer, his evidence requires to be accepted and the same is rightly accepted. The complainant being a person selected by the Trapping Officer as decoy, it would not be possible even for the accused to argue that he should be equated as an accomplice.

4. To appreciate the rival contentions placed before the Court, I would like to state the case of the prosecution in brief. The appellant accused, in

the month of February-1985, was serving as Un-Armed 2nd Grade Police Constable and he was posted as Traffic Head Constable at GH-6 Circle in the State Capital- Gandhinagar. The P.W.2 Arjanji Thakor is a taxi driver and was transporting the passengers from Ahmedabad to Mehsana. He was doing this job-work in a taxi-jeep car having capacity to carry six passengers. On 10.12.1985, at about 5.15 p.m., one Mr. Rathod hired a taxi of P.W. 2 Arjanji Thakor and he was informed that he being a taxi driver, he shall have to co-operate the police in carrying out the decoy trap operation because the police officials posted as traffic constables are harassing the vehicle owners/drivers passing through the roads through the State Capital-Gandhinagar. P.W.2 Arjanji, therefore, decided to co-operate to the police and a decoy trap was arranged. After completing the formalities in Anti-Corruption Bureau (ACB for short) Office, the jeep car was taken to the State Capital-Gandhinagar and when it was passing through the GH-6 Circle, at about 7.00 p.m., the accused was on duty at GH-6 Circle. He gave signal to stop the jeep-taxi and driver stopped his jeep-taxi bearing registration No. GRW 9910. It was found that there were more number of passengers than the actual carrying capacity of the vehicle and, therefore, the accused demanded and accepted Rs.5/-. This demand and acceptance of Rs.5/ was an offence punishable under the PC Act. Immediately on acceptance, the accused was caught by the trapping officer. It is alleged that the demand was made in presence of panch witness

and the conversation between accused and the driver of the jeep-taxi was over-heard by him. After investigation and obtaining necessary sanction to prosecute the accused, ACB police chargesheeted the accused for the aforesaid offences. The ld. Special Judge, after framing the charge (exh.3), conducted the trial and found that the prosecution has successfully established the charge by leading the cogent and convincing evidence. The ld. Trial Judge, therefore, vide the judgment under challenge, convicted the appellant accused and sentenced him as aforesaid.

5. On careful reading of the deposition of P.W.2 Arjanji Thakor- taxi driver, it emerges that he was called for the purpose by the ACB officials, but he has stated that his taxi was hired as he is doing the business of transporting the passengers from Income-tax Area of the city of Ahmedabad to Mehsana and he has gone to the office of the ACB situated at Dufnala, Shahibagh, Ahmedabad and on his consent, he is joined as decoy. One Mr. Rathod who is a complainant in the present case, has called him and hired his jeep-taxi. The procedure of applying anthracene powder on muddamal currency notes that were to be placed in the pocket of this witness has been narrated by him and he has also stated the sequence of events that had occurred in the evening after 5.15 p.m. to 7.00 p.m. when the accused was trapped by the complainant Mr. Rathod. It is stated by this witness that Mr. Rathod was following the

jeep of this witness and he was maintaining the distance of about 1 k.m. When jeep-taxi reached GH-6 Circle at Gandhinagar, the Traffic Head Constable -accused had stopped his taxi and had asked that why he had taken more passengers? In response thereto, this witness i.e. P.W.2 Arjanji Thakor- jeep driver had stated that the passengers are not much more in number and, therefore, he should be permitted to go. It is stated that the accused thereupon stated that he shall not permit him to go, but if this witness is able to "do something", then his request can be considered. It is also stated that actual phrase used by the accused was "he should understand the things". According to this witness P.W.2, the accused had said that " Kaink Samajo" (in vernacular Gujarati language), meaning thereby that this witness should give some money to the Traffic Head Constable. The driver expressed his incapacity to pay the amount. The accused then demanded Rs.5/ and it is stated by this witness that the accused told him that if this witness pays Rs.5/-, then he will permit him to go. At that time, out of the muddamal currency notes, this witness gave currency note of Rs.5/-denomination to the accused with his left hand and that currency note of Rs.5/- was put in the memo-book of the accused. The Memo-Book was in the handwriting of the accused. Thereafter, the accused permitted the jeep-driver i.e. P.W.2 Arjanji to proceeding further. In the meanwhile, the jeep car of complainant Mr. Rathod had reached to the spot and the accused was caught. Immediately, the currency

note of Rs.5/- was recovered. Personal search of accused was also carried out. This witness has also proved that the muddamal currency note was found from the possession of the accused i.e. from his memo-book and it was the very muddamal currency note. This witness had also identified the accused in the Court. It is also proved by this witness that the number of the note was mentioned in the panchanama drawn by police in ACB Office was confirmed again and it was also ascertained that it was the very same muddamal currency note that was given to him during the trap.

6. The defence counsel in the trial Court has cross-examined this witness at length. It appears from the plain reading of the deposition that this witness must have remained in the witness-box for the whole day and even on the next day also the defence counsel Mr. Jadeja has cross-examined this witness. Practically, each step of the decoy trap arranged by complainant Mr. Rathod was brought to the notice and it is rightly observed by the ld. Trial Judge that he stood to the test of cross-examination. There are no material contradictions or any improvement or modulation which can be termed as inherent infirmity in the version. It is observed by this Court and the Apex Court in more than one case that the complainant or an important witness is not supposed to tell the parrot-like story. The version of P.W.2 Arjanji placed before the Court is found natural. In the cross-examination, this witness has unfolded number of things which are found natural including the

conduct of the accused and subsequent events that has occurred within 5 to 10 minutes after arrival of ACB police on the spot. The witness has also accepted number of things wherein he has said that he does not know that happened thereafter and that too after the arrest of the accused. He has also stated that he was given currency notes of Rs.40/- of different denominations and the balance amount of Rs.5/- was returned by him to the police officer on the spot at GH-6 Circle itself. He has denied the suggestion that his hands were never seen/inspected under the ultra-violet lamp on completion of the trap. He has also denied the suggestion that after the arrest of the accused, he had attempted to get rid of the grip of the ACB officer and there was something like tug of war between the ACB officers and the accused.

7. The evidence of this witness was required to be appreciated in the background of the panchanama exh.8. Panch No.1 Nannukhan Pathan has been examined by the prosecution as P.W.1. He is also a driver and he has proved the second part of the panchanama drawn in the present case substantially. It is true that the panch no.1 being the driver, may have some favourable feelings qua P.W.2 Arjanji, but ultimately nothing has come on record to show that this panch witness had any interest in the result of the case. No personal affiliation or friendship between P.W.2 and panch No.1 has been established by the defence side nor it is proved directly or indirectly that panch No.1 has any inimical terms or feelings

against the accused. There is no element of either hostility between this witness-P.W.1 Nannukhan (exh.7) and accused nor any material improvement. He has stated specifically that before placing demand, the accused had even asked that who is the owner of the said jeep car and demand of Rs.5/- was made by the accused also has been proved by this witness and the ld. Trial Judge has rightly said that it is not possible to raise any doubt in the say of this witness.

8. This is not a case where the ld. Trial Judge has recorded the conviction on the sole deposition of the police officer who has arranged the decoy trap.

9. Mr. Rathod is the complainant. So, he can be said to be a person interested in the result of the case. So, his evidence was required to be scanned closely and the ld. Trial Judge has rightly found that the say of this witness-complainant gets corroboration from two material witnesses i.e. P.W.1 Panch Nannukhan and P.W.2 Jeep-taxi driver Arjanji Thakor who has corroborated in arranging the decoy trap, his say should not be viewed with any suspicion. Nothing has come on record from which it can be inferred that panch or the driver of the jeep even hinted directly or indirectly that his jeep car may be stopped at a particular place in the city of Gandhinagar. It has also not come on record that a jeep normally proceedings towards Mehsana from Ahmedabad, would not cross / pass through the place

where the jeep was found intercepted and stopped by the accused. In this totality of the facts and circumstances, in my view, the finding of conviction recorded by the ld. Trial Judge can not be said to be erroneous or illegal. It is not possible for this Court to agree with the submissions made by ld. Counsel Ms. Datta for Ms.Kruti Vora for the appellant accused that any error has been committed in evaluating the evidence. Of course, the muddamal currency note of Rs.5/- was not accepted by hand to hand, but that by itself would not make the case of the prosecution doubtful. It was handed over when P.W.2 was in the jeep car and that too on driver's seat, but the style of accepting the bribe may differ. So, this is a case where the Court was entitled to raise the presumption against the accused as there was cogent evidence as to the demand and acceptance of the bribe amount and when presumption has not been effectively rebutted by the accused, the ld. Trial Judge was supposed to convict and, therefore, the accused has rightly been held guilty.

10. It is not necessary for this Court to assign detailed reasons afresh in view of the above-stated details and discussion. Adopting the reasons assigned by the ld. Trial Judge, it is held that the conviction recorded by the ld. Trial Judge is absolutely legal and no interference is called for.

11. So far as the arguments advanced by ld. Counsel Ms. Datta for the appellant accused on the point of

quantum of punishment is concerned, this Court can alter the quantum of substantive sentence awarded by the trial Court. It is true that the trap was arranged in the month of February-1985 and the trial was conducted in the year 1988. So, the trial has reached to its logical conclusion within about 3 ½ years. But when the accused has remained on bail althroughout, then asking the appellant accused to undergo imprisonment for one year after a lapse of about 18 years, would be too harsh. The Court is aware that the Apex court has observed that the pendency of the criminal appeal would not be a matter of much relevance in deciding the quantum of punishment and the Court should look into the gravity of the offence, but these observations are made normally in all heinous crimes or where the maximum punishment has been prescribed. So, by assigning one or the other reason, the Court should not be tempted to impose the punishment less than the minimum prescribed. Under the old Act i.e. Act of 1947, no minimum punishment has been prescribed. So, the Court can reduce the quantum of punishment i.e. substantive punishment when the accused is to be asked to go to the prison after about 21 years of actual trap and after about 18 years from the date of conviction. The substantive punishment, therefore, if is reduced to R/I for One Month would meet the ends of justice, since the bribe amount is Rs.5/- only. It is true that it was also accepted from a small man, but the Court should not forget that this was a decoy trap and the accused has not attempted to extort money

against the wish and will of a poor taxi-jEEP driver. By now, the accused must have lost his job and on confirmation of conviction, he shall be deprived of all other benefits that a government servant would normally get. Even his family would also not be entitled to any family pension. Termination of a government job and that too with a stigma is as serious as sentence of imprisonment. So, keeping these aspects in mind, if substantive sentence is reduced to R/I for One Month as aforesaid, that would meet the ends of justice. Hence, this Court is inclined to accept the arguments advanced by ld. Counsel Ms. Datta for the appellant accused.

13. In the result, the present Criminal Appeal is partly allowed. The impugned order of conviction dated 28.12.1987 recorded by the ld. Special Judge, Ahmedabad (Rural) at Narol in Special Case No.5/1986 whereby the ld. Trial Judge has convicted the appellant accused for the offence punishable under section 161 of IPC and under sections 5(1)(d) R/w section 5(2) of the Prevention of Corruption Act is hereby confirmed. The order passed by the ld. Trial Judge not to award separate sentence for the offence punishable under section 161 of IPC is also hereby confirmed and no separate sentence is awarded to the appellant accused. However, the order of sentence is hereby modified and reduced to the extent that instead of the respondent accused sentenced to undergo R/I for 1 Year and to pay a fine of Rs.200/, I/d to undergo further R/I for 3 months for the

offences punishable under section 5(1)(d) R/w Section 5(2) of the Prevention of Corruption Act as ordered by the ld. Trial Judge, the appellant accused is hereby ordered to undergo R/I for 1 Month (One Month). The sentence of awarding fine of Rs.200/ is not altered. However, I/d of payment of fine of Rs.200/, the appellant accused shall undergo further S/I for 15 days.

The appellant accused is on bail. His bail bonds stands cancelled. The appellant accused is directed to surrender before the trial Court concerned to serve out the sentence within 15 days from today failing which the trial Court shall issue non-bailable warrant to secure the custody of the appellant accused and he shall be sent to prison to serve the sentence.

[C.K. BUCH, J]

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